

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

08-CR-6270L

v.

TRYN PARKER,

Defendant.

This Court referred pretrial motions in this criminal case to United States Magistrate Judge Marian W. Payson pursuant to 28 U.S.C. § 636(b). Several motions have been filed, some by counsel for defendant and some by defendant himself *pro se*. Defendant sought to suppress evidence relating to photographic identifications and to dismiss the indictment based on vindictive prosecution. Magistrate Judge Payson issued a thorough 13 page Report and Recommendation (Dkt. #51). No objections to that Report and Recommendation were filed by defense counsel but Parker submitted a somewhat lengthy document (Dkt. #59) objecting to Magistrate Judge Payson's Report and Recommendation (Dkt. #51). The objections were not filed timely. Parker also moved to dismiss on the grounds of a speedy trial violation.

I have carefully reviewed Magistrate Judge Payson's Report and Recommendation (Dkt. #51), and I find no basis to alter or modify it. I, therefore, accept the Report and Recommendation

and adopt its conclusions. I find no basis to suppress the identification and no basis to dismiss the indictment based on so-called vindictive prosecution.

Because plaintiff is represented by counsel, defendant has no right to file *pro se* motions, and I reject and deny his *pro se* objections and motion to dismiss for a speedy trial violation. I have, though, considered the substance of Parker's objections and motion to dismiss, and I find no merit to either the objections or the motion to dismiss based on a violation of speedy trial.

Parker had filed several other *pro se* motions (Dkt. ## 47, 52). Those motions were untimely and in violation of the scheduling order. I did issue an order (Dkt. #54) referring those *pro se* motions to Magistrate Judge Payson to recommend whether the Court should even consider the motions because Parker has counsel and had filed these motions *pro se*.


On December 22, 2009, Magistrate Judge Payson issued a Report and Recommendation (Dkt. #57) recommending that this Court deny the *pro se* motions. The basis for the Magistrate Judge's decision was principally because Parker has no right to so-called hybrid representation, that is, to have the benefit of counsel and also file *pro se* motions. Magistrate Judge Payson discusses at length the rule and the reasons for it. I agree with her analysis of the law and the reasons in this case why such hybrid representation should not be allowed. Therefore, I accept and adopt Magistrate Judge Payson's Report and Recommendation, and I deny defendant's *pro se* motions (Dkt. ## 47, 52). Furthermore, the Court will not accept further *pro se* motions filed by this defendant.

While these matters were pending, plaintiff submitted an affidavit (Dkt. #62), sworn to December 22, 2009, which this Court received on December 30, 2009. Defendant discusses what he views as violations of the Fourth, Fifth and Sixth Amendments of the Constitution. I do not treat

this as a motion but even if I were to do so, I deny it on the grounds that it is filed, *pro se*, and defendant has counsel. Furthermore, there is nothing in the lengthy affidavit to warrant any relief or any finding of a Fourth, Fifth or Sixth Amendment violation.

Defendant's *pro se* amended motion to dismiss (Dkt. #58) is denied as moot.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
January 7, 2010.